

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Road Mechanic R. C. Vanhoozer for alleged violation of Rules M801 and M806 was without just and sufficient cause (System File MW-85-53-CB/53-866).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

While working as a Roadway Machine Mechanic in September 1985, Claimant was instructed to troubleshoot a speedswing at Carrollton, Texas. On September 17, 1985, Claimant telephoned the Regional Work Equipment Manager and reported that the engine on the speedswing required an overhaul. The Manager directed Claimant to disassemble the engine and take the cylinder head to a Carrier-authorized vendor for an estimate on parts and repair, but not to have the job done until he received proper authorization.

According to facts developed at a later Investigation, Claimant had already taken the cylinder head to Plano Auto Parts on September 12, 1985, for repair, without authorization. That vendor was unable to do the work but, with Claimant's knowledge and approval, subcontracted the job to Cylinder Head Sales in Dallas, Texas. Cylinder Head Sales, which was not a Carrier-approved vendor, repaired the head for \$341.28, which Plano Auto Parts, as primary contractor, billed to Carrier for \$561.

Claimant did not mention any of this to the Manager on September 17, 1985, but he did call back on September 19 and tell the Manager it would cost over \$2,000 for Plano Auto Parts to do the repair and parts on the cylinder head. The Manager told Claimant that he could have the job done much less expensively by another company in Arkansas and ordered him not to have it done by Plano Auto Parts. Later in the evening of September 19, Claimant again telephoned the Manager and revealed that he had already had the job done for "about \$350." According to Claimant, the higher figure he initially reported to the Manager included an unauthorized "line of credit" which he sought to establish in Carrier's name at Plano Auto Parts "for emergency parts or other equipment."

After reviewing the transcript of Investigation, the Division Engineer notified Claimant on October 7, 1985, as follows:

"After reviewing all testimonies from transcript of hearing held on October 2, 1985, concur that facts speak for themselves, mainly:

1. By your own admission you admitted that you were insubordinate.
2. By your own admission you admitted using the company's credit.

Your actions in this case constitutes violation of Rule M801 and M806 for the Maintenance of Way and Structures on the St. Louis Southwestern Railway Company which reads in part as follows:

'M801 - Employees will not be retained in the service who are insubordinate

M806 - Unless specially authorized employees must not use the company's credit'

For the above stated reasons, you are hereby dismissed from the service of the St. Louis Southwestern Railway Company effective October 7, 1985. Please return any company property you may have in your possession to a company representative."

Careful review of the record shows that Claimant did violate the cited Carrier Rules against obtaining credit without approval and that he did so knowingly in order to expedite repairs to a disabled machine. Clearly this employee showed poor judgment and a headstrong approach to the problem by "doing it his way" rather than by the book. These transgressions cannot be overlooked but his misconduct does not appear to us to rise to the level of insubordination.

There is no persuasive evidence that Claimant sought to defraud Carrier or obtain personal gain through dishonesty in his unauthorized use of credit. Rather, the record persuades us that an overzealous employee stepped out of bounds and his misconduct warrants discipline but not discharge.

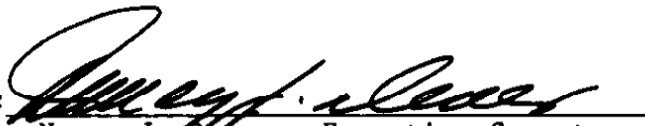
In all of the circumstances, including Claimant's seven year unblemished prior service record, we find the penalty of termination unreasonably harsh and excessive. Claimant shall be restored to service with seniority and service credits unimpaired, but without backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.